

# The search for peace with justice and human rights in Colombia

Report of the Fifth International Caravana of Jurists to Colombia





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**This report is dedicated to all those who struggle for peace and human rights in Colombia. In recognition and solidarity.**

**Report produced by:** Alun Gibbs, Mary Henderson, Joanne Hutchinson, Natasha Morgan,  
Olivia Percival, Anouska Perram, Sue Willman

**Design and Print: Bang On Print + Design | Telephone: 0191 500 5960 | Email: [info@bangonprint.co.uk](mailto:info@bangonprint.co.uk)**  
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## Introduction & recommendations

The Colombian Caravana of International Jurists ("Caravana") made its fifth visit to Colombia in August 2016. This was a truly international delegation with an impressive range of civil and criminal law expertise, from twelve different countries, including a prosecutor, judges, practising lawyers and academics, with considerable knowledge of Colombia and Latin America. An important aspect of the Caravana is the coming together of lawyers from so many different jurisdictions to share experience, ready to bear witness. We were delighted to include lawyers from Argentina, Honduras, Greece and Poland, all of whom face considerable challenges in their home countries but wished to offer support to Colombian human rights lawyers and defenders at this crucial time in their history.

The visit took place amid expectations that the final Peace Agreement between FARC-EP and the Colombian State, concluded after four years of peace talks in Havana and the announcement of the referendum on October 2nd 2016, would represent a concrete opportunity to begin a formal process to bring over 50 years of internal armed conflict to an end. Ending the internal armed conflict between the FARC-EP and the Colombian State, alongside the resulting transitional justice arrangements as part of the agreed peace process, influenced the focus of the Caravana visit. Our long-standing commitment to supporting the work of human rights lawyers and other defenders in Colombia provided an opportunity to consider the role of human rights obligations, both domestic and international, in securing genuine, long-term peace and robust transitional justice mechanisms.

*To truly deliver peace, there must be recognition of the role of justice and human rights, of the lawyers that provide access to justice, and of the prosecutors and judges who administer it.*

It seems that despite moves towards peace, there is extra pressure on lawyers and human rights defenders. We were shocked to be told by the respected NGO, Somos Defensores, that in the **first six months of this year, no less than 35 defenders were murdered**.<sup>1</sup> The UN Office of the High Commissioner for Human Rights in Colombia ("OHCHR") is hugely concerned that 63 defenders were murdered in 2015, more than for the last 20 years. In our 2014 report we called on the government to end the stigmatisation of human rights lawyers. It was disappointing to hear that a senior military officer has since appeared on Colombian television suggesting that CCAJAR, the well-respected Colombian lawyers' collective, has replaced the FARC-EP as the enemy of the State.

Since our visit, and at the time of writing this report (November 2016), the immediate future of the peace process has been thrown into considerable uncertainty by the rejection of the Peace Agreement in the referendum. The international community must continue to support civil society in Colombia at this critical moment and engage with on-going efforts towards peace. The human rights cases we refer to in this report require urgent action.

It is our hope that the Colombian people will ultimately find a way forward to ending the armed conflict and to find a lasting peace, with justice.

The International Caravana of Jurists, August 2016  
Centro León Tolstoy, Bogotá © Colombia Caravana Netherlands



1. Somos Defensores (2016). ¿Este es el fin? Periodic report. <http://www.somosdefensores.org/attachments/article/140/este-es-el-fin-informe-semestral-2016.pdf>.

# Recommendations

## Protection of lawyers, judges and human rights defenders

1. The government must urgently address the increase in reported attacks on human rights defenders against the background of the peace process. This should include prioritising fair and transparent investigations into murders and attacks, to end impunity;
2. The government should issue public statements from the level of the President downwards across all departments, in particular the Ministry of Defence to make it clear that the defence of human rights is an essential part of the move towards peace, and that the state fully supports the role of human rights defenders, prosecutors and the judiciary;
3. The National Protection Unit does valuable work, but changes are needed to reduce delays and to ensure more appropriate types of protection are provided, including preventative measures, in full consultation with the beneficiaries of these measures;
4. To ensure real access to justice and rule of law, adequate resources and protection are also needed for prosecutors and judges.

## Truth

1. There is an urgent need to implement the provisions of the Truth Commission, alongside the ongoing peace process;
2. The government should take steps to ensure that documents relating to the actions of the state during the conflict are preserved. Moreover, the current exclusions from access to information on national security grounds should be reviewed and brought into line with international standards.

## Land restitution and transitional justice

1. The government should review and consider reforms to address the flaws in Law 1448 as described in more detail in our report. Protection is needed to enable victims and their lawyers to participate in the Land Restitution process without fear of reprisals;
2. The mechanisms agreed so far in the Peace Accords which contribute to the protection of fundamental human rights and access to justice must be maintained, without being subjected to any renegotiation which could lead to a weakening of protection for human rights defenders, victims and society in general. The government must continue to place the victims of human rights violations at the centre of the process when those held responsible for State crimes (including extra-judicial killings, forced disappearance, massacres, sexual violence and others) are sanctioned under the Special Jurisdiction for Peace.

## Guarantees of non-recurrence

To contribute to the future protection of human rights defenders, political leaders, victims, trade unionists, journalists and community leaders, among others;

1. The paramilitaries and their enabling structures must be urgently and fully dismantled by the State;
2. The government must review the military doctrine and remove the idea of the "internal enemy" from within the ranks of its security forces;

## Recommendations

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### Prisons

1. The Colombian government should undertake an urgent national review of all prisons, to ensure that these comply with Resolution 1/08 by the Inter-American Commission on Human Rights (IACHR): Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, particularly in relation to healthcare crisis in prisons and chronic overcrowding;
2. There should be a review of the treatment and imprisonment of indigenous prisoners;
3. A time-limit should be introduced for the use of preventative detention, which currently constitutes a blatant injustice.

### Socio-economic rights

1. The Caravana was again struck by the link between inequality and injustice in Colombia, most notably in the Pacific coast in Tumaco, where we observed many similar issues to those highlighted in our last report in relation to Buenaventura. We call on both the Colombian government and the international community to increase resources to these communities to deliver benefit directly to their mainly Afro-Colombian populations, both in relation to poverty-relief and in improving the infrastructure of local government and the court system.

### The role of the international community

1. The Colombian State must ensure the continuance of the full mandate of the Office of the UN High Commissioner for Human Rights in Colombia, including its annual human rights report on Colombia presented to the UN Human Rights Council in Geneva;
2. The international community has a vital role in monitoring not just the cease-fire, but also the implementation of transitional justice and ensuring that the transition from conflict to peace does not result in an upsurge in violence and human rights violations. This must be backed by resources, not only for bilateral support for the Colombian State but also for civil society human rights projects;
3. Foreign diplomatic missions have a vital role to play in ensuring that their multinationals comply with international human rights and environmental norms, rather than paying lip-service. There is a need to guarantee the right to free, prior and informed consultation with campesino, Indigenous and Afro-Colombian communities, and to ensure that the peace process will not lead to uncontrolled development and further inequality;
4. The European Union must closely monitor the ongoing situation via its bilateral dialogue with the Colombian State, its human rights dialogue in Colombia in consultation with a wide range of diverse Colombian human rights organisations, and through the mandate of Eamonn Gilmore, EU Special Peace Envoy.



# Methodology

In researching this report, Caravana members conducted meetings and interviews with human rights lawyers, NGOs, social movements, victims, community leaders, international organisations, diplomatic missions, and the Colombian authorities. These meetings took place during a week in August in seven regional centres of Colombia (Medellín, Cúcuta, Barranquilla, Bucaramanga, Cartagena, Tumaco and Cali) as well as in the capital city, Bogotá. The meetings were organised and arranged in conjunction with local lawyers and human rights organisations. We were fortunate to hear from so many prominent experts and lawyers, especially in Colombia, and are particularly grateful to the UN office OHCHR for their detailed briefing. We acknowledge the input of the Colombian embassy in London in organizing high-level meetings with Colombian authorities, and to the State authorities at a local and national level for maintaining an open door to respond to our questions.



Caravanistas writing up information in Tumaco © Colombia Caravana UK

Some of the individuals interviewed spoke with the Caravana on the condition that their names and other identifying information were withheld because of the risks they face, and we have withheld this information when requested; others are keen that the international spotlight shines on the injustices they have experienced.

This report was written by the Colombia Caravana UK Lawyers' Group and published on 18th November 2016. Any factual errors are entirely ours. The Spanish version of this report may be subject to minor adjustments. As part of the preparation and research of the report, the Caravana consulted credible news articles, the decisions of judicial and other adjudicative bodies, and the publications of human rights organisations and these sources are duly

cited. Further research and corroboration was done through follow-up emails. Complementary documents, updates and further case studies will be published on our website in due course ([www.colombiancaravana.org.uk](http://www.colombiancaravana.org.uk)).

## Thematic issues raised in the 2016 visit

Guiding the approach of the Caravana visit was the international normative and legal framework underpinning transitional justice and the rights of victims in post-conflict Colombia. These include (i) information and truth concerning violations suffered during the conflict; (ii) access to justice; and (iii) reparation for harm suffered including guarantees of non-repetition.<sup>2</sup>

The Caravana regional visits concentrated on the context of the upcoming transitional justice process, recognised by international law. We organised our investigation according to the 'themes' of **truth, justice and reparations, including guarantees of non-repetition**. These themes mirror the establishment of the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz*). This report is structured so that the main sections reflect the key components of the peace agreements in terms of truth, justice, reparations and guarantees of non-repetition. The commentary is supported by drawing on emblematic examples from the regional visits.

## Truth

The process for determining the truth requires that the right to seek and receive information is properly protected and exercised freely without restrictions through legislation or other methods. Efforts to obstruct or impede gathering of information, facts or circumstances surrounding the violation of rights should be viewed as incompatible with international norms regarding truth and proper judicial investigation.<sup>3</sup>

Any authentic approach to truth must involve a **past, present** and **future** component. Finding information about past infringements of fundamental rights becomes intrinsic to holding perpetrators to account. There must be no impunity or amnesties for grave crimes committed by any actor during the armed conflict.

**In the present** the State must "ensure that the protections and guarantees for preventing human rights violations are strengthened, and that the victims enjoy access to

2. UN, Human Rights Council, Resolution 12/11 Human Rights and Transitional Justice; Resolution 12/12, Right to the Truth and UN, General Assembly, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

3. Article 25, ACHR.

## Methodology

mechanisms that guarantee comprehensive redress for human rights violations they have suffered”.<sup>4</sup>

The **future-looking** aspect of truth in transitional justice is linked to guarantees about non-repetition of serious human rights abuse and proper reparations for victims. Only in this way can Colombian society move towards wider rehabilitation after the internal conflict, enabling victims to re-build lives.

### Justice

Access to justice is also closely connected to the question of adequate redress for victims of past wrongs. As a party to the UN International Covenant on Civil and Political Rights (“**ICCPR**”) and the American Convention on Human Rights (“**ACHR**”), Colombia has twin legal obligations to protect the human rights of all persons within its territory and to prevent, punish and remedy violations. It is the State’s duty to effectively investigate and prosecute serious human rights violations. This arises from the obligation to protect and guarantee access to justice and judicial protection under Articles 1(1), 8, and 25 of the ACHR.

The failure of the State to properly observe and undertake to protect access to justice gives rise to structural impunity, which the Inter-American Court of Human Rights (“**IACtHR**”) has defined as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violating protected rights”.<sup>5</sup> IACHR (2013). Truth, Justice and Reparation: Fourth Report of the Human Rights Situation in Colombia. OEA/Ser.L/V/II Doc. 49/13, para 1202 The problem of impunity has been particularly problematic in the armed conflict in Colombia and has been noted in previous Caravana visits and reports.<sup>6</sup>

### Reparations, non-repetition and rehabilitation

In its review of Colombia’s comprehensive reparations policy and mechanisms,<sup>7</sup> the Inter-American Commission on Human Rights (“**IACHR**”) noted that there were “serious difficulties” with the participation of victims in the implementation of Law 1448 of 2011 – the Law on Victims and Land Restitution (Ley de Víctimas y Restitución de Tierras).<sup>8</sup> It further noted the major delays, a lack of knowledge and procedures and a “paralysis of State institutions”. The sustainability and success of certain

important reparations policies, like land restitution, is clearly linked to the overarching justice issues of impunity, and the critical need to strengthen mechanisms for access to justice, judicial guarantees and judicial protection. Equally, international human rights instruments provide the basis for the interconnections between transitional justice and robust commitments to non-repetition.<sup>9</sup>

### What is non-repetition?

It can be explained as mechanisms which aim to prevent the same type of violations happening in future, for example by reforming institutions, laws or policies.<sup>10</sup>

Given that non-repetition entails a cultural and institutional commitment to move beyond violence and human rights abuses, it inevitably carries with it a connotation of rehabilitation. Genuine social, political and cultural transformation in Colombia will involve a shift towards the acknowledgment of the deep socio-economic divisions and disadvantages that continue to fuel conflict. Some of the Caravana’s partners have strongly argued for the need for not only the strengthening of State institutions for investigation and protection, but also for the transformation of economic and legal structures, including the economic or development model that underpins government policies. The IACHR has also emphasised the importance of addressing structural and systemic sources of violence and human rights violations, including the very challenging problem of how to comprehensively dismantle the paramilitaries or neo-paramilitaries through the effective investigation and sanction of their political and economic sponsors. In this way non-repetition can be interpreted as part of a wider rehabilitation of the State structures to ensure a lasting peace. For more discussion of non-repetition, see also page 27)



Workshop with messages for peace and social justice, Tumaco © Eleri H Davies

4. IACHR (2013). Truth, Justice and Reparation: Fourth Report of the Human Rights Situation in Colombia. OEA/Ser.L/V/II Doc. 49/13, para 1202.

5. IACtHR (2001) Case of Ivcher Bronstein v Peru. Judgment of February 6, 2001. Series C No.74, para 186.

6. Report of the IV International Delegation of Lawyers to Colombia, August 2014, p 14.

7. IACHR (2013), supra note 4, para 56.

8. IACHR (2013), supra note 4, para 57.

9. See note 4.

10. One example would be CCAJAR’s proposal for transitional justice from 2015 – available on the Caravana website: <http://www.colombiancaravana.org.uk/ccajar-release-proposal-for-justice-process-if-peace-agreement-signed/>.

# Section 1

## Truth

### Introduction

The Office of the United Nations High Commissioner for Human Rights has stated that:

*The right to truth about gross human rights violations and serious violations of international human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. This right is closely linked with other rights and has both an individual and a societal dimension and should be considered as a non-derogable right and not be subject to limitations.*<sup>11</sup>

The principles and legal scope of the right to the truth were originally established by case law in the Inter-American system (*Manuel Bolaños v Ecuador*).<sup>12</sup> The scope of the right to truth includes the right of victims and their families “to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in the violations”.<sup>13</sup> The right to the truth is also understood as belonging to all members of society. The Inter-American Commission has stated, for example, that “[e]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetitions of such acts in the future”.<sup>14</sup> The right to truth is fundamentally understood as contributing to societal healing, by permitting individual and collective understanding of violations of human rights as well as a society’s way to protect itself from the tragedy of repeating the mistakes of the past. The right to the truth is closely linked to the right to justice.<sup>15</sup>

### Aspects of the right to truth in Colombia

In Colombia, victims of human rights violations and their families have for many years demanded that their fundamental right to the truth be respected. Grassroots movements of family members of forcibly disappeared persons, victims of extrajudicial executions, massacres, and gender-based violence have documented their cases and kept the issue of the truth in the public eye. This has often been achieved in conjunction with human rights lawyers/defenders, and in many cases amid threats, attacks and stigmatisation from State and non-State actors who have sought to suppress the full disclosure of the truth about these crimes.

During the armed conflict, Colombia has implemented two transitional justice mechanisms, namely Law 975 of 2005, the Justice and Peace Law (*Ley de Justicia y Paz*), Law 1448 of 2011 (the aforementioned Law on Victims and Land Restitution). Law 975 of 2005 (and its regulatory decrees) was introduced to facilitate the demobilisation of paramilitary groups and their reincorporation into civilian life, through a mechanism known as the “Justice and Peace process”. This law set out a special prosecution model that includes alternative sentencing for demobilized paramilitaries that was intended to offer truth and reparations to victims. By 2013, some 2,000 former paramilitaries had passed through the Justice and Peace tribunals,<sup>16</sup> although according to Amnesty International’s 2014 statement to the Human Rights Council, only 22 had been convicted of human rights violations through this process.<sup>17</sup> Many high-level paramilitary commanders were extradited to the USA on narcotics charges and so evaded telling the truth in Colombia.<sup>18</sup> This process has contributed to establishing a degree of truth through a judicial process, although this can only be described as partial, especially given the testimony the Caravana delegation heard (again) about the persistence of paramilitary groups throughout Colombia.

Law 1448 of 2011 establishes a reparations program and land restitution procedure. Progress made in the implementation of this law will be further discussed in Section 3 of this report. The Victims Unit, the Land Restitution Unit, and the National Centre for Historical

11. OHCHR (2010). “The right to truth”. Published at <http://www.ohchr.org/EN/NewsEvents/Pages/Therighttothetruth.aspx>

12. IACHR (1995). *Manuel Bolaños v Ecuador*. Judgment of 12 September 1995, Case 10,580, Report No.10/95.

13. IACHR (2014). *The Right to Truth in the Americas*. OEA/Ser.L/V/II.152 Doc 2, para 14.

14. Ibid, at para 15. See also para 24, citing OAS, General Assembly, Resolution AG/RES. 2175 (XXXVI-O/06) “Right to the Truth” and UN, Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth, E/CN.4/2006/91, January 9, 2006.

15. Ki-Moon, Ban, (2016). “Secretary-General’s Message for 2016”. UN. Published at <http://www.un.org/en/events/righttotruthday/2016/sgmessage.shtml>

16. International Centre for Transitional Justice (undated). “Background: Demobilisation of paramilitary groups, Justice and Peace Law, Victims’ Law, and peace talks with FARC”. Published at <https://www.ictj.org/our-work/regions-and-countries/colombia>

17. Amnesty International (2014). *The Human Rights Situation in Colombia: Amnesty International’s Written Statement to the 25th Session of the UN Human Rights Council* (3-28 March 2014), 13 February 2014, p 2.

18. “Masiva Extradición de Jefes Paramilitares”. *El Espectador*, May 13, 2008, <http://www.elespectador.com/node/13431/>



## Section 1 Truth

Memory (NCHM) were created to implement these programs. The NCHM describes its purpose “to contribute to the comprehensive reparation and to the right to the truth for the victims of the Colombian armed conflict as well as society in general”.



Caravanistas hear from victims and defenders,  
Tumaco © Colombia Caravana UK

### Human rights lawyers and defenders and the obstacles to a victim's right to truth

The human rights lawyers/defenders we met described a variety of scenarios in which they had been seeking the right to the truth on behalf of communities. Some cases relate to incidents that occurred over twenty years ago. They were faced with corrupt practices; serious and ongoing threats to their own safety; victimisation/re-victimisation of their clients and the communities they support; and under-resourced and inefficient State bodies. In some cases the staff employed in those bodies, such as prosecutors and judges, were also facing serious threats.

The cases and situations detailed below highlight some of the matters that were reported to the Caravana during its short visit. Sadly some of these cases have featured in previous Caravana reports.

#### Case study 1: Murder of human rights lawyers defending Ana Alix del Pilar Utrera (Cúcuta)

Ana Alix was accused of being a member of the ELN, the second largest guerrilla group in Colombia. She was detained on 29 January 2003 and held in detention for over a year and a half; after she was released she fled into exile in Canada. She claims that while in prison she suffered torture and ill-treatment.

Ana Alix was seeking and has continued to seek exoneration, and four lawyers have taken on her case, both during and after her detention. Three of these lawyers were murdered. Ana Alix's father, Carlos Augusto Utrera, was the first. After taking the case, he was alleged to be a member of the ELN and was later killed on 18 February 2003. Jairo Ernesto Obregón was the second lawyer that took on the case. He was murdered on 31 October 2003. Carlos Salvador Bernal Ramírez was the third lawyer; he was killed on 1 April 2004. Before being killed, Carlos Salvador Bernal Ramírez had reported death threats against him and had said that if he did not withdraw from the case he would suffer the same fate as the other two previous lawyers because there were no guarantees of protection.

Independent lawyer Liliana Rodríguez is currently working on the case of the murder of Ana Alix's father, Carlos Augusto Utrera. This case is being brought under two different jurisdictions: the ordinary and Justice and Peace jurisdictions. Under the latter, the lawyer described to the Caravana the difficulties she has experienced in gaining information on the case, and that any information she received was often limited and incorrect. The paramilitaries linked to the case had confessed to murdering the three lawyers but did not explain the link between those murders and the lawyers' work on Ana Alix's case. So the victims' families feel that the paramilitaries have not adequately recognised the truth, and that the families have not been asked for forgiveness.

Today, the National Victims' Unit recognises 46,000 victims of forced disappearance. There are at least 5,000 recorded cases of extrajudicial killings or “false positives”. Several landmark legal decisions have been made by the Inter-American System ordering the Colombian State to respect the right to truth.

# Section 1

## Truth

### CASE STUDY 2: Murder of Naimen Augustin Lara, Chiriguaná community

On July 11, 2016, in the city of Chiriguaná, in the Cesar department, Naimen Augustin Lara, was shot and killed by the security forces whilst attending a public protest in support of access to healthcare.

Chiriguaná is an Afro-Colombian, indigenous and campesino community which survives from fishing and livestock farming. They had come together to block the main highway to the coast, la Ruta del Sol, in protest at the closure of a local hospital, which left them with a long expensive journey to access urgent medical treatment. Despite the peaceful nature of the protest, the national anti-riot police (ESMAD) arrived and fired tear gas and bullets into the crowd, attacking senior citizens, children and disabled people.

Naimen had only gone to the protest to look for his 15-year-old son who he died trying to protect. He was shot several times in the back. He was the father of 6 children, a well-known community figure who worked with local youth.

The Caravana was told that the police attempted to remove all evidence of violence by damaging or stealing cell phones and cameras of those present at the protest. In addition, it has been reported that the following day, the police approached members of the community, asking them to sign pre-written statements about what took place at the protest.

Two days after the protest, the main witness to Naimen's shooting, his niece, was chased and seriously attacked by an unknown man. She was beaten, sexually assaulted, and threatened that if anyone were to testify against the police they would be killed. She was discovered unconscious, clothes torn off, with a rope and nylon around her neck. She is now in hiding.

Lawyers from EJP also received verbal threats when they arrived in Chiriguaná to investigate the situation. Naimen's family are seeking the truth, a proper investigation and the prosecution of the State officials responsible. They asked for the Caravana's help in accessing evidence such as video footage. The case also exemplifies a crackdown on the right to protest, particularly in cases such as this where corporate interests are at stake. The Caravana was told the new Police Code was resulting in numbers of similar cases, as in the recent national agricultural protest known as the MINGA.



Rommel Durán Castellanos and victim from Chiriguaná, Bucaramanga © Melissa Tessler

### CASE STUDY 3: Enforced disappearance in the Comuna 13 (Medellín)

The Medellín delegation heard how Comuna 13, a marginalised community in the west of the city remains severely affected by the country's long armed conflict. Almost fourteen years ago, between 16 and 20 October 2002, hundreds of people were arbitrarily detained, some raped, tortured, "disappeared" or killed<sup>19</sup> during a Colombian military operation known as "Operation Orion", which was aimed at driving out the FARC and ELN operating in the area. The military action was conducted by the Fourth Brigade, together with the Departamento Administrativo de Seguridad (DAS) (the security services), police special forces and the Public Prosecutor. Shortly after the initial military incursion, locals reported that paramilitary groups had set up roadblocks and raided houses, looking for people with supposed links to the guerrillas. Since that time, armed gangs (BACRIM)<sup>20</sup> continue to maintain tight social control in Comuna 13 and other marginalised communities in Medellín through intimidation and extortion.<sup>21</sup>

The ex-Commander of the Colombian Army, General Mario Montoya was implicated by former paramilitary commander Diego Fernando Murillo Bejarano, alias "Don Berna", for having directly coordinated the development of the military / paramilitary operation Orion when Montoya commanded the Army's IV Brigade.<sup>22</sup> In 2015, efforts to find some of the "disappeared" began in earnest. It is thought there are mass graves at construction sites in the

19. According to the Centro de Investigación y Educación Popular (CINEP), Operation Orion resulted in one death, 28 people injured and 355 detained.

20. "Armed gangsters" refer to armed criminal groups made up of demobilised paramilitaries, guerrillas and other illegal actors.

21. Interviews with family members of victims of Operation Orion represented by the Corporation of Judicial Freedom in Medellín 22-24 August 2016 and Amnesty International press release 23 September 2011: Medellín: The city where no-one feels safe.

22. According to the US Department of State's 2015 Human Rights Report on Colombia, of April 2016, "[in 2015] the Attorney General's Office investigation continued into retired army general Mario Montoya Uribe and retired national police general Leonardo Gallego Castrillon. They were accused of allegedly supporting paramilitary groups and their alleged joint actions in operations, such as "Operation Orion". <http://www.state.gov/j/drl/rls/hrrpt/2015/wha/253001.htm>

## Section 1 Truth

town. In October 2015, the Superior Justice and Peace Tribunal issued a judgment requiring the local government authorities in Antioquia and the Mayor's office to adopt measures that allowed for the building sites to be closed, in order to facilitate the search for up to 300 disappeared persons<sup>23</sup> in the areas of La Escombrera and also La Arenera.

Although the first excavation efforts have not found anything so far, the Mayor's office is providing financial support for the excavations and the Public Prosecutor is providing technical support. A multi-disciplinary group of lawyers and other professionals such as psychologists and anthropologists are working on the development of a plan to find the "disappeared" from Comuna 13.



Delegates hear testimony from lawyers and defenders, Medellín © Colombia Caravana UK

Enforced disappearance continues to be an ongoing human rights violation. In Cúcuta alone, the Caravana delegation was told that in 2014 there were 318 complaints of disappearance; from only January-April 2016 there were close to 110.<sup>24</sup>

The Caravana also heard testimony about the grave difficulties facing (mainly Afro-Colombian and indigenous) communities on Colombia's Pacific coast.<sup>25</sup> The socio-economic and security problems facing these communities amount to abandonment by the State, the reality of which must be addressed by State authorities. The situation that the Caravana found in Tumaco was similar to that witnessed in Buenaventura in 2014.

### CASE STUDY 4: Economic, social and cultural rights – abandoned truths (Tumaco)

Truth simply cannot prevail in a culture of fear-driven silence and the people of Tumaco need concrete assurances of justice and protection to enable their voices to be heard.<sup>26</sup>

The true nature of life in marginalised regions, towns and neighbourhoods is often ignored or hidden from official versions. Of particular concern to the Caravana delegation were reports to the delegates about the appalling living conditions for the majority Afro-Colombian and indigenous population in Tumaco and surrounding areas. Of the 203,971 inhabitants,<sup>27</sup> 75% are registered as victims of the armed conflict. The majority of the population is of Afro-Colombian descent, with 6% from the indigenous Awá population. Socially marginalized and politically excluded, the citizens of Tumaco remain "invisible" in national public life. Incredibly, it was not until 20 years ago, when a highway was built linking Tumaco to the Nariño capital, Pasto, that the municipality was formally recognised within Colombia. Tumaco remains geographically isolated since the only road out of town is controlled by the paramilitaries, and so the municipality is inaccessible except by air. Residents live in houses on stilts in neighbourhoods that stretch onto the Pacific tide, which threatens daily destruction. A marked disaster zone, tsunami evacuation routes are posted throughout the town. The displaced population, after being forcibly expelled from their land, had no choice but to build on rubbish pits. Sanitation is poor if not non-existent, few homes have electricity and the local San Andrés Hospital has no access to running water. Around 84% of the population live below the poverty line and 70% are unemployed, seven times the national average.

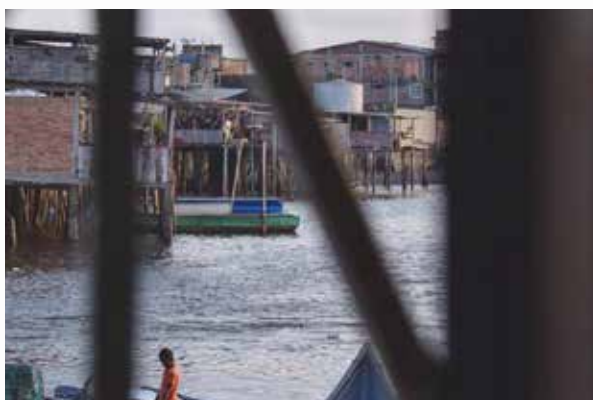
23. "Tribunal Superior de Justicia de Medellín ordena cierre de La Escombrera y La Arenera". El Mundo, 16 October 2015, published at [http://www.elmundo.com/movil/noticia\\_detalle.php?idx=264517&](http://www.elmundo.com/movil/noticia_detalle.php?idx=264517&).  
 24. Testimony to Caravana delegates in Cúcuta.  
 25. The Caravana's findings in 2016 echo what the Caravana reported from its visit to Buenaventura during the 2014 Caravana delegation.  
 26. Caravana Tumaco report, 2016  
 27. Alcaldía de Tumaco – Nariño (2016). "Nuestro municipio: Indicadores: 2016". Published at: <http://www.tumaco-narino.gov.co/indicadores.shtml#poblacion>

## Section 1

### Truth



Tumaco, department of Nariño © Eleri H Davies



Tumaco, department of Nariño © Eleri H Davies

### The Truth Commission and transitional justice

Under the Peace Agreements between the FARC-EP and the National Colombian government, a Truth Commission is to be established, to permit victims to recount what occurred during the armed conflict. The reconstruction of "historical memory" is seen as a fundamental aspect of peacebuilding, since it returns dignity to victims and allows for a debate in society to contribute to non-repetition.

Delegates to Medellín heard from human rights lawyers and victims alike that for truth to be restorative, it should be comprehensive, and that testimony should serve as a basis for building historical memory which makes visible all those interrelated factors that make up the map of economic, social and political conflict that the country has lived through and continues to experience. As part of the Peace Agreement, the Truth Commission is planned to function at the territorial level to open space for civil society to participate and in some regions preparations are already underway for this. Caravana delegates to Medellín heard that, for example, the Diocese of Quibdó is working in the Chocó region on leading the creation of a Truth Commission for the Pacific region.

A similar situation was reported in relation to the truth about violence on the Caribbean coast. In Barranquilla, the Caravana delegation was informed that 2015 was the most violent year of the past decade. Over 500 murders were recorded, of which over half were carried out by contract killers. This is despite the fact that the mayor had run a campaign to further militarise the city to improve safety. The Caravana was told that the Early Alert Reports submitted by the local ombudsmen had been rejected by the government, apparently because the findings in these reports contradict the political rhetoric that there has been a successful demobilisation of the paramilitary groups. Therefore, the violent situation in Barranquilla has not been recognised and has escalated.<sup>28</sup>

28. Testimony to Caravana delegates in Barranquilla.



## Section 2

### Justice

#### Introduction

The American Convention on Human Rights recognises the right to judicial guarantees for those accused of a criminal charge<sup>29</sup> and the right to prompt and effective judicial recourse in response to violations of fundamental rights.<sup>30</sup>

Where judicial recourse is not available, the Inter American Court has emphasised that “the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations”.<sup>31</sup> In addition, the Inter-American Commission has stated that “the most effective way to protect [...] is by investigating the acts of violence, and punishing the persons responsible”.<sup>32</sup>

Access to justice is therefore not only a fundamental right, but also an essential element for securing other rights, such as protection and the right to non-repetition of human rights violations. The most recent report on Colombia of the UN Office of the High Commissioner for Human Rights (OHCHR) does not give a current figure for impunity, but states that “State institutions, particularly in the judicial branch, continue to face serious difficulties in overcoming deficiencies and demonstrating results”.<sup>33</sup> These concerns are reflected in the experiences of the Fifth Caravana delegation to Colombia, detailed in this section. Whilst the Caravana recognises that there has been some progress, it is also clear that there is much work ahead.

We received testimony on the transitional justice model in the Peace Agreement signed between the Colombian government and the FARC- EP, including some concerns, but also the hope that it would help to address long-standing impunity and injustice associated with the ordinary justice system. However, human rights and victims’ organisations made clear that numerous violations have been perpetrated and continue to be committed outside of the conflict, including targeted abuses against human rights defenders. Many of these acts are perpetrated by actors that are not included within the peace agreement, to whom the ordinary justice system applies. In particular, we heard concerns about on-going abuses by new paramilitary groups.



Placard showing lawyers and judges killed for carrying out their profession, Medellín © Colombia Caravana UK

This section therefore highlights concerns and improvements with both the ordinary and the proposed transitional justice system, in order to support a lasting and stable peace.

#### The ordinary justice system

This section reviews the progress made in the investigation and conviction of a range of cases within the Colombian criminal justice system, based on the evidence gathered during the delegation. It reports on investigations of abuses against human rights defenders, cases brought against paramilitary groups, the Colombian army and police, as well as those related to economic projects. It also provides information on prosecutions against human rights defenders and on the criminal justice system from the perspective of prisoners and imprisoned members of guerrilla groups.

We found that in the majority of cases of crimes which the victims attributed to paramilitaries, the State had not carried out an effective investigation and no one had been brought to justice, even when evidence was available. In cases against the Colombian army and police, there has been limited progress in some of the most high-profile cases. We also received reports of obstacles to justice, including cases of human rights abuses continuing to be heard within the military justice system and threats against victims and witnesses by unknown actors.

29. Article 8, ACHR: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

30. Article 25, ACHR: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

31. IACHR (2013), *supra* note 4, para 201.

32. IACHR (2013), *supra* note 4, para 197.

33. OHCHR (2016). Annual report of the UN High Commissioner for Human Rights: Addendum: Situation of Human Rights in Colombia. UN Doc. No A/HRC/31/3/Add.2, 15 March 2016, para 52.



## Section 2

### Justice

The State has acted more effectively in convicting members of the FARC-EP and ELN, but we heard reports of a lack of due process, including prolonged imprisonment without conviction and trials in absentia. Of particular concern was evidence that the State conducted investigations against human rights defenders and social leaders more quickly than those against the perpetrators of crimes against them, and that the former were marred with irregularities, such as prolonged imprisonment on remand and the use of questionable or illegal evidence. We were saddened to hear the news that human rights defender David Ravelo remains in custody, though we were pleased that he has been transferred to a prison closer to home so he can be more easily visited by his family and supporters, including the Regional Human Rights Corporation (CREDHOS) which he founded and which continues to receive threats.

Human rights lawyers working on the criminal defence cases of alleged guerrillas and of human rights defenders are stigmatised and targeted, as are those who work on cases against State actors.

### Lack of investigations of abuses against human rights defenders

The Caravana delegation welcomes the progress in this area reported by the National Attorney General's Office, but notes that we continued to receive testimonies of severe delays in the investigations of abuses against human rights defenders and social leaders.

According to the National Attorney General's Office, of more than 100 cases of human rights defenders assassinated in 2015 and 2016, eight cases are awaiting sentencing and another eight have reached trial.<sup>34</sup> This has been recognised by the NGO "Somos Defensores" as the "biggest advance by the Attorney General's Office to find those responsible for crimes against human rights defenders".<sup>35</sup>

This was supported by information we received: three convictions in cases of the murders of human rights defenders this year were confirmed at the time of our visit. However, we were concerned to hear that in all other cases of murders of human rights defenders and social

activists this year, investigations had only reached the preliminary stage. This was supported by information received from community organisations and human rights groups, who had received no information on investigations into recent murders of their members, and for which none of the available witnesses had been interviewed.<sup>36</sup> Furthermore, many cases from earlier years are yet to be investigated (See Case study 5 below: Miller Angulo).

### Lack of investigations into threats by new paramilitary groups

#### CASE STUDY 5: Miller Angulo (Tumaco)

Human rights defender, Miller Angulo was killed on 1 December 2012 after attending a human rights meeting in Pasto on 29 November 2012. At that meeting, unauthorised members of the national army, dressed in civilian clothing, were taking photographs of attendees. Miller was unnerved and urged that the group return to the hotel. He was killed two days later by hired hitmen on motorbikes on a bridge in Tumaco. A man in the municipality of Armenia has confessed to Miller's killing, but details of his prosecution are unknown.

Whilst some progress has been made in the investigation of murders, the same cannot be said for threats. For example, the Attorney General's Office in Cali reported there had been no convictions for threats against human rights defenders. This is made more concerning by the fact that many threats are delivered on leaflets signed by new paramilitary groups or in emails and texts, yet it appears that these leads are not followed and the electronic identification methods used in other cases are not employed. The case of Marta Giraldo, member of MOVICE, Valle del Cauca, exemplifies this inaction (see Case study 6 below).

In addition, the Caravana noted that gender had an impact on the progress of investigations (see Case study 7).

34. Somos Defensores (2016), supra note 1.

35. Somos Defensores (2016), supra note 1.

36. For example, in the case of a local community leader killed in July 2016 in Tumaco, it was reported that no information had been communicated to victims' organisations or family regarding the investigation. In addition, witnesses have not been interviewed by the police.

## Section 2 Justice



Caravana regional group with lawyers and defenders in Cali © Gareth Sims

### Obstacles in investigations against State actors

#### CASE STUDY 6: Marta Giraldo (Cali)

On 11 April 2016, death threats, in the form of leaflets signed by the paramilitary group “Gaitan Self-defence forces” were posted under the doors of the Cali offices of three organisations: the National Movement of Victims of State Crimes (MOVICE), the CUT trade union congress and the Committee of Solidarity with Political Prisoners (CSPP). The threats named 15 people and were addressed to four social leaders: Martha Giraldo (MOVICE), José Milciades Sánchez (Sintraunicol trade union), Walter Agredo (CSPP) and Wilson Sánchez (CUT).

The text of the threat read as follows: “We have already been exterminating those gonorrhoea sons of bitch rats, left-wingers, activists, defenders of human rights and the peace process, indigenous leaders, militants of the People’s Congress, trade unionists, guerrilla collaborators ... we declare all those masked as workers’ rights defenders to be a military target”.

At the time of the Caravana visit in August 2016, the investigation of this threat remained in the preliminary stage, and the victims had not been interviewed by the Attorney General’s Office.

#### CASE STUDY 7: The Corporación Colectivo Abogados Luis Carlos Pérez CCALCP (Bucaramanga and Cúcuta)

Since 2005, CCALCP and its members have experienced, at least 40 serious security incidents ranging from physical aggression, attacks, threats, harassment, surveillance, thefts, defamation and attacks on the Collective’s infrastructure. The Collective has reported these incidents to the authorities, both formally and publicly including the Attorney General’s Office. Not a single concrete result has flowed from these complaints. Certain complaints such as being followed and harassment have been met with the discriminatory response that the women had been pursued by admirers or spurned boyfriends.



Caravana regional group and the Colectivo de Abogados Luis Carlos Pérez (CCALCP), Cúcuta © CCALCP

## Section 2

### Justice



María Nancy Ardila Pedraza © Melissa Tessler

### Attacks on lawyers and witnesses

According to OHCHR, one of the four principal modes of abuses against human rights defenders is abuses perpetrated against defenders representing victims in litigation against State actors for human rights violations. These abuses are said to coincide often with key moments in the judicial process.<sup>37</sup> This was reflected in testimony received by the Caravana delegation. The case of Naimen Augustin Lara provides a compelling example. Leonardo Jaimes Marín, an EJP lawyer, received a death threat when he commenced acting in this case on behalf of the family. And shortly after the murder, the main witness was beaten, sexually assaulted and told that if anyone were to testify against the police they would be killed (see Case study 2).

### Attacks on members of the judiciary

The Caravana also received reports that members of the judiciary, including public prosecutors from the Attorney General's Office were under threat as a result of their work on criminal cases against State actors and illegal armed groups. Additionally, the delegation heard that members of the judiciary working on such cases received inadequate protection measures.

### CASE STUDY 8: Threats against Prosecutor María Nancy Ardila Pedraza and killings of members of her family

The Caravana delegation met with María Nancy Ardila Pedraza, a Prosecutor from the north of the Valle del Cauca department. In 2012, María Nancy ordered a number of archived cases to be investigated, leading to the arrest in 2014 of Alexander Toro López (alias El Viejo or Alex) and 28 other members of the Clan Úsuga, a paramilitary group (also known as Los Urabeños). They were charged with being responsible for between 40 and 50 cases involving murder, drug trafficking and extortion.<sup>38</sup> Since that time, María Nancy and her family have been subjected to continuous threats and attacks, forcing the Prosecutor to leave her job and her home and move to another area of Colombia. Tragically, in January and May of 2015, María Nancy's two brothers, Elio Fabio Ardila and John Jairo Ardila, were murdered in the Eje Cafetero region. Subsequently, 6 members of the Clan Úsuga have since been detained for the killings of her two brothers, and the Prosecutor has been granted some protection measures by the UNP. However, María Nancy and her family continue to receive threats and live in fear for their lives. The Caravana is extremely concerned about the safety of the Prosecutor and her family, and is closely monitoring this case.

### Military jurisdiction

The Caravana also heard evidence of continuing concerns regarding the hearing of cases of extrajudicial killings by the army within the military justice system, even when the victims were members of social organisations. In 2015, five of the ten extrajudicial killings by the Colombian army were described as "operational errors", yet in each case the cause was not identified.<sup>39</sup>

37. OHCHR (2016), supra note 32, para 81.

38. "La fiscal que vive un calvario por juzgar a las bandas criminales", El Tiempo, 1 June 2016. Published at <http://www.eltiempo.com/colombia/califiscal-amenazada-por-bandas-criminales/16608094>.

39. OHCHR (2016), supra note 32, para 66.

## Section 2 Justice

### CASE STUDY 9: Extrajudicial executions (Bucaramanga)

It is estimated that 5000 people were killed between 2002 and 2008 in what has become known as the “false positives” scandal whereby innocent people were passed off as combatants. Our photo shows the Bucaramanga delegation with a number of surviving relatives who they had interviewed, in the office of the lawyers Corporación Equipo Jurídico Pueblos (EJP), who hosted the Caravana delegation in Bucaramanga. Cielo Patricia Sánchez told the moving story of her son, Rafael Andrés Plata Sánchez, who was found murdered and falsely identified as a guerrilla fighter, and the impact on her of not only losing her son, but also of the damage to his reputation. Despite strong evidence to suggest who is responsible for his murder, the right to the truth is being denied to Cielo. She is being supported by EJP to seek the truth behind who was responsible for Rafael’s death.

The delegation also met two State prosecutors, Diego Rosas and Carlos León, from Fiscal 66 and 67 of the Human Rights Unit (Unidad de Derechos Humanos y DIH) who were working on almost 80 similar cases, which they insisted should be described as what they were: extra-judicial killings by the State. Rosas and León said they were not getting enough support or protection they needed to enable them to carry out this important work and secure convictions of the army members, including senior army officers who were responsible. They had asked three times for protection without success and were left living in fear, sometimes having to drive themselves to remote rural areas to conduct investigations. This is despite the Colombian government recently confirming to the UN Human Rights Committee “the absolute commitment of Colombia to a zero-tolerance policy to extra-judicial killings, torture and the ‘false positive’ cases, and to clarifying those issues and ensuring that the perpetrators were brought to justice”.<sup>40</sup> Meanwhile the EJP’s lawyers Gloria Silva, Rommel Durán Castellanos y Leonardo Jaimes Marín regularly received anonymous threats for their work on this and other cases, yet both Castellanos and Silva are still waiting for protection to be agreed by the National Protection Unit.



Bucaramanga delegation meeting, local judge @ Colombia Caravana UK

### Investigations related to the presence of economic projects

The Caravana also noted the lack of progress in investigations into abuses related to economic projects. For example, within the area affected by the Hidrosogamoso hydroelectric project, in Santander, over six community leaders who defended community rights and highlighted the negative impact of the dam have been killed or disappeared, yet no one has been convicted of these crimes (see Case study 10 below).

Similarly, an instance of false public accusations made against the CCALCP women lawyers’ collective by the Ecopetrol Colombian national oil company were reported by CCALCP to the Attorney General’s Office in 2006; yet the complaint was not forwarded to the Cúcuta Office to be investigated until 2012. At the time of the Caravana visit, CCALCP had received no further news on the investigation since 2012.

40. OHCHR (2016). “Human Rights Committee considers the report of Colombia”.  
Published at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20715&LangID=E>

## Section 2

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#### CASE STUDY 10: Hidrosogamoso Dam

The owner of Hidrosogamoso is ISAGEN, a company linked to the Colombian Ministry of Energy and Mining, which until earlier this year was 51.6% owned by the Colombian government. In January 2016 it was sold for approximately US\$2 billion to a Canadian group led by a subsidiary of Brookfield Asset Management Inc. A number of other multinational corporations are also involved in funding the project.

Since work on the dam began in 2009, over 2000 families have been displaced and over six community leaders have been murdered or disappeared. These crimes have been committed without consequences for the perpetrators. Those killed or disappeared are named below:

- Luis Arango, President of the Association of fishermen of El Llanito, murdered 12 February 2009.
- Ever Cardenas, President of the Association of Sand vendors of the Sogamoso River, murdered 15 May 2009.
- Marco Tulio Salamanca, President of the Community Action Committee of the Marta Village, murdered 3 September 2009.
- Honorio Llorente, President of the Community Action Committee of the Puente Sogamoso village, in the municipality of Puerto Wilches, murdered 17 October 2009.
- Jairo Rodriguez Caro, leader of the Marta community, murdered 13 April 2011.
- Miguel Ángel Pabón Pabón, President of the El Peaje settlement and leader of the Social Movement for the defence of the Sogamoso River, disappeared 31 October 2012.

#### Prosecutions of human rights defenders and critics

When justice operators are confronted with accusations and criminal charges that are clearly unfounded, they are obligated to investigate the source(s) of these arbitrary complaints or vexatious litigation and impose an appropriate sanction. Doing so will also serve to discourage future abuse of the judicial process and waste of judicial resources.<sup>41</sup>

The delegation heard testimony in cases of prosecutions and imprisonment of human rights defenders, social activists and academics, based on questionable or illegal evidence. Those accused are often imprisoned before trial for long periods of time, and for as long as five years in the case of one trade unionist. They are later released when it is shown that the charges against them cannot be proven. Others are convicted in cases which ignore due process and must wait years to be released despite their innocence. Among many others, illustrative cases of wrongful prosecutions and/or imprisonment include those of CCALCP Women lawyers' collective; Miguel Angel Beltran, Colombian academic; David Ravelo, human rights defender; Huber Ballesteros, executive member of the CUT trade union congress and National Organiser for the Marcha Patriótica social movement; Ruben Dario Portillo and members of the Awá indigenous community in Tumaco (see Case study 11 below).

41. IACHR (2015). Criminalization of the Work of Human Rights Defenders. OEA/Ser.L/V/II. Doc 49/15, para 73.



## Section 2 Justice

### CASE STUDY 11: Indigenous leaders incarcerated (Tumaco)

The delegation met in private with three detainees of the indigenous Awá community, all of whom had spent more than one year in preventative detention awaiting trial.

The eldest of the three indigenous leaders was charged with 11 murders, displacement and terrorism. He was a member of the guardia indígena ("indigenous guard") and was arrested by the army. He had been taken to Pasto, before being transferred to Tumaco. Since his arrest, investigations had revealed that at least one of the victims had in fact died of natural causes and many of the witnesses of the indigenous population were instructed to sign statements and documents which they did not understand.

The second detainee was the brother of an indigenous governor within the Awá community, and had also been charged with the unlawful killing of 3 indigenous people. He reported that military officers had attended his home looking for him and so he presented himself at a nearby police station where he was arrested. He informed officers that he was in active military service at the time the murders took place, almost one year prior to his arrest. Records confirmed this account, but the State response was that he had had temporary permission to leave at the time.

The third and youngest detainee was charged with conspiracy to commit a crime and was also undertaking military service at the time of the alleged wrongdoing. His brother was a prominent leader and member of the Awá guardia indígena. At the time of his arrest military officers attended his home firing shots in the air.

The detainees fear that they face continued and prolonged preventative detention as they await trial. One of the detainees had a hearing scheduled for 30 August 2016, but was not hopeful and suspected that an adjournment was the most likely outcome.



Delegates wait to gain entry to the prison in Tumaco © Colombia Caravana UK

### The criminal justice system and prisons

The Institute for Criminal Policy Research has found that there are currently 120,657 prisoners in Colombia, representing average overcrowding of around 154.7% across the Colombian prison system,<sup>42</sup> with 36.5% of all prisoners being held on remand.<sup>43</sup>

The Colombian Constitutional Court declared the situation in Colombian prisons to be an "unconstitutional state of affairs" in 1998, and again in 2013 and 2015. In the latter two declarations, the Court identified that State criminal justice policy had led to violations of fundamental rights in relation to overcrowding, access to health care, access to food, hygiene, and the mixing of convicted and pre-trial prisoners, and ordered urgent measures to resolve the situation.<sup>44</sup>

The Caravana received reports on the prison situation from State authorities as well as visiting four regional prisons, where the Caravana was able to observe conditions and collect testimony from prisoners: Jamundi (Valle del Cauca), Palogordo (Santander), Bella Vista (Antioquia), La Modelo (Norte de Santander) and Tumaco (Narino). The information gathered confirmed that the concerns of the Constitutional Court outlined above persist, and that the change ordered by the Court has not been adequately implemented. There is a crisis situation in Colombian prisons which needs to be urgently addressed. In one case, a prisoner had been held for five years without trial, a serious injustice.

42. <http://www.prisonstudies.org/country/colombia>

43. OHCHR (2016), *supra* note 32, para 93.

44. Constitutional Court of Colombia, Sentence T-762/15, <http://www.corteconstitucional.gov.co/relatoria/2015/t-762-15.htm>.

## Section 2

### Justice

#### Cases brought against members of guerrilla groups

During the prison visits, delegates were able to interview prisoners who were members of either the FARC-EP or the ELN and identified two principal trends in relation to their legal cases. Firstly, there were numerous cases of alleged guerrillas held on remand for years pre-trial. Secondly, a significant proportion of guerrilla prisoners claimed that they had been tried in absentia. The Caravana is aware that under Colombian law this is permitted in certain cases, so long as it is shown that reasonable steps have been taken to locate the accused and ensure their presence. However, the cases reported included members of guerrilla groups who were tried and sentenced in absentia, when they were already imprisoned in Colombian jails.<sup>45</sup>



Caravana delegates with the Superior Judicial Council, Medellín © Mikel Córdoba

#### Proposed Transitional Justice System

It is important to underline that transitional justice undertaken in Colombia must observe the obligations that are inherent in international human rights law and ensure that these are protected under the new framework for peace. At the centre of such efforts must be the rights of redress of victims of the conflict, as the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence observed:

*Transitional Justice is not the name for a distinct form of justice, but of a strategy for achieving justice for redressing massive rights violations in times of transition. Redress cannot be achieved*

*without truth, justice, reparations and guarantees of non-recurrence ... reconciliation cannot constitute a new burden placed on the shoulders of those who have already been victimized.*<sup>46</sup>

The peace agreement between the Colombian government and the FARC-EP, sets out a "comprehensive system of truth, justice, reparations and non-repetition", and the Special Jurisdiction for Peace ("Peace Jurisdiction") makes up the justice component of this. The Comprehensive System was agreed during the fifth agenda point of the peace agreement, on victims, following the presentation of testimony and proposals by victims' organisations in Havana.

It has been commended by the international community, including International Criminal Court (ICC) Prosecutor, Fatou Bensouda:

*I note, with satisfaction, that the final text of the peace agreement excludes amnesties and pardons for crimes against humanity and war crimes under the Rome Statute. The peace agreement acknowledges the central place of victims in the process and their legitimate aspirations for justice ... The Special Jurisdiction for Peace to be established in Colombia is expected to perform this role and to focus on those most responsible for the most serious crimes committed during the armed conflict.*<sup>47</sup>

The Peace Jurisdiction as outlined in the final Peace Agreement will in all likelihood form the basis of any subsequent reforms, and as such is set out below.

#### Amnesties and pardons

The Jurisdiction was developed in accordance with International law, and thus aims to strike a balance between two central legal obligations:

*At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.*<sup>48</sup>

45. For example, the case of Mayer Fernandez Sanchez Perte, member of the ELN guerrilla group, convicted of kidnapping, homicide and extortion and sentenced to 24 years and 3 months in prison. Mayer reports that he was being held in prison at the time of the trial, but was not called to attend.

46. Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence (2012). Transitional Justice is not a 'soft' form of Justice. September 11, 2012, A/HRC/21/46

47. Bensouda, F. (2016). Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the peace negotiations between the Government of Colombia and the FARC-EP. Published at <https://www.icc-cpi.int/Pages/item.aspx?name=160901-otp-stat-colombia>.

48. Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 6.5.

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*The most serious crimes of concern to the international community as a whole must not go unpunished and ...their effective prosecution must be ensured by taking measures at the national level.*<sup>49</sup>

It has been made clear that under the Rome Statute, where a State does out carry out its duty to prosecute serious crimes, the ICC must intervene.<sup>50</sup> Following these obligations, under the Peace Jurisdiction, amnesties or pardons can only be granted to members of the guerrilla groups who have committed political crimes relating to the armed conflict. This includes rebellion and related crimes, such as assisting, financing and supporting rebellion, illegal carrying of arms, and temporary capture and deaths in combat (when compatible with IHL), among others. The Colombian Criminal Code defines rebellion as “those who through the employment of arms attempt to overthrow the national Government, or suppress or modify the present constitutional or legal regime”.<sup>51</sup>

Amnesties and pardons are not available for members of guerrilla groups who have committed crimes against humanity, war crimes, or other international crimes recognised under the Rome Statute, including taking hostages, recruiting of minors, torture, sexual violence, extrajudicial executions and forced disappearance, among others. Nor are they available for crimes committed outside of the armed conflict, or crimes committed by State agents. Receiving an amnesty does not waive the obligation to contribute to the truth process.

#### Cooperating with the truth and alternative sentencing

Justice within the Peace Jurisdiction is based on encouraging victims’ fundamental rights, including the right to truth. Thus, the more a perpetrator contributes a clear and accurate picture of the truth, the less punitive and more restorative sentence he or she will receive. This is approached according to three categories of cases: In cases where the truth is recognised from the start and the perpetrator has admitted the facts and has contributed the complete truth, they can receive the minimum sentence level. This is a sentence of restriction of liberty under supervision for a period of between five to eight years for more serious crimes and two to five years for less serious crimes. This type of sentence includes

performing community works such as the construction of infrastructure (drinking water access points, sanitary systems, electricity networks), eradication of land mines and illegal crop substitution.

In cases where the truth is recognised during trial, the case will be remitted to the Unit for Investigation and Accusation. If there are merits after investigation, the Unit will make a formal accusation at the Tribunal for Peace, the 1st Instance without Recognition Section, and an adversarial trial will begin. Under these circumstances, the perpetrator will receive a medium level sentence. This consists of five to eight years of deprivation of liberty or two to five years in cases where the perpetrator did not have a decisive role in the most serious crimes.

Finally in cases where the truth is not recognised the process and punishment will follow the ordinary judicial and punitive process.

#### The process

The Peace Jurisdiction applies to all perpetrators of crimes committed within the conflict or as a result of the conflict, including the crimes of financing and collaborating with paramilitary groups.<sup>52</sup>

#### Issues of concern

During the delegation, the Caravana heard concerns about the Peace Jurisdiction relating to the following issues:

**Prisoners of conscience:** The Caravana noted the existence of prisoners who appeared to be wrongly accused and/or convicted of links to guerrilla groups. Several agenda points mention the possibility of including such cases within the Peace Jurisdiction. For example, point 38 of agenda point 5 states that amnesties and pardons will be available without the person having to say they are a member of a guerrilla group. Also, the Section for Revision allows for the possibility of revising convictions. The Caravana noted support for these possibilities and concerns to ensure that prisoners of conscience could have their cases reassessed within the Jurisdiction, without making a false admission of guilt or being tarred by the same brush as others tried under the Jurisdiction.

49. Rome Statute of the International Criminal Court, Preamble.

50. “Transitional Justice in Colombia and the role of the International Criminal Court”, keynote speech by James Stewart, Deputy Prosecutor of the ICC, 13 May 2015: <https://www.icc-cpi.int/iccdocs/otp/otp-stat-13-05-2015-ENG.pdf>.

51. Colombian Criminal Code, Art. 125, Modificado por el Decreto 2266 de 1991, Art. 80.

52. Agreement for a stable and lasting peace, agenda point 5.5.1.2, II, 32.

## Section 2

### Justice

#### **Lack of justice against State agents:**

The Caravana noted three principal concerns relating to justice against State agents.

Some of the victims we met raised concerns about how the transitional justice proposals in the peace process would be implemented because of fears that perpetrators would go free and they would lose their chance of obtaining justice. The Peace Agreement provides that military commanders cannot be found responsible for the crimes of their subordinates solely because of their rank. Rather, their responsibility will need to be proven based on their effective control and knowledge of the act, and the measures they took to prevent it and promote its investigation. There are concerns this could lead to a different interpretation of Command Responsibility than that used under international law, where military commanders are criminally responsible for the acts of their subordinates and thus make it more difficult to bring high ranking members of the military to justice.<sup>53</sup>



Caravana delegates in meeting with the Colombian authorities, Barranquilla © Colombia Caravana UK

Extrajudicial executions of civilians by the Colombian army have been shown to have regularly been falsely presented as killings of guerrillas downed in combat. The Caravana therefore heard concerns from victims' organisations that there should be special vigilance to ensure that cases of extrajudicial executions by the

army are not prevented from being heard by the Peace Jurisdiction on this basis.

The Peace Jurisdiction does not apply to current or former presidents. Any information received on such cases under the Peace Jurisdiction truth process will be remitted to the present authority responsible for the investigation of presidents – the Commission of Investigation and Accusation of the House of Representatives. In 2015, there were 186 investigations open against former president Alvaro Uribe in this Commission, including in relation to the El Aro Massacre, during which 19 people were killed.<sup>54</sup> There has not been progress in that case. Between 1992 and 2014, the Commission had over three thousand investigations pending, but these resulted in no criminal charges.<sup>55</sup>

#### **Victims' participation:**

The Caravana heard concerns from victims' organisations regarding their participation in the Peace Jurisdiction. Many organisations recognised and commended the fact that the Peace Jurisdiction on paper gives victims a central role and is designed to protect victims' rights. However, victims expressed concerns that this may not be implemented in reality. These fears were principally based on negative past experience, including the participation of victims under the Justice and Peace law and the Law of Victims and Land Restitution. For example, in the former, victims were not able to obtain full information from perpetrators on what happened to their loved ones. In the latter, it was reported that victims who participate have faced threats and stigmatisation after voicing their requests.

At the heart of concerns was the belief that the more victims have genuine participation in the judicial process, the more likely it will be to secure their fundamental rights to truth, justice, reparations and non-recurrence.

The right to reparations is recognised under international law as an integral part of the right to a remedy for serious human rights violations,<sup>56</sup> and the IACHR has endorsed the principle of comprehensive reparations as one of the pillars upon which a stable and lasting peace in Colombia can be constructed.<sup>57</sup> Full and effective reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of "non-repetition" (or non-recurrence).<sup>58</sup>

53. Vivanco, J M (2016). "Colombia Peace Deal's Promises, and Flaws". Human Rights Watch. Published at <https://www.hrw.org/news/2016/09/27/colombia-peace-deals-promise-and-flaws>

54. "Alvaro Uribe Vélez tiene más de 186 procesos en la Comisión de Acusación". El País. 30 October 2016. <http://www.elpais.com.co/elpais/colombia/noticias/alvaro-uribe-velez-nombre-186-procesos-comision-acusacion>

55. "Los penosos números de la Comisión de Acusaciones". La Semana. 5 March 2015. <http://www.semana.com/nacion/articulo/comision-de-acusaciones/419959-3>

56. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147 (Basic Principles), Part IX.

57. IACHR (2013), supra note 4, para. 49.

58. Basic Principles (supra note 1), paras 18-23.



## Section 3

# Reparations & guarantees of non-repetition

It has been five years since Colombia enacted Law 1448/2011, which establishes and regulates the rights of victims of violations of international humanitarian law and of serious and manifest human rights violations in the context of the internal armed conflict.<sup>59</sup> It has put in place an administrative programme for reparations on a huge scale, which includes individual and collective measures, both material and symbolic, of compensation, satisfaction, rehabilitation and a mixed programme of land restitution.<sup>60</sup>

However, previous Caravana delegations have found a number of problems associated with implementing this law in practice,<sup>61</sup> and delegates of the Fifth Caravana heard further testimony about the problematic functioning of Law 1448, five years on from its entry into force.

### The process for land restitution under Law 1448

The restitution process is composed of three phases: the administrative phase, the judicial phase and the post-judicial phase.

The administrative phase is the phase in which victims apply to have their name and their land listed in the Register of Stolen and Forcibly Abandoned Lands (Registro de Tierras Despojadas y Abandonadas Forzosamente). The Land Restitution Unit (Unidad de Restitución de Tierras) ("LRU") will launch an investigation in order to substantiate what the victim is claiming, even if the only evidence of their displacement is their word. This investigation involves the LRU accessing institutional sources, academic sources, land registers and speaking to the local community and visiting the plot of land itself. The LRU will also ascertain if the land is abandoned or currently occupied.

In the judicial phase, the case is heard by a judge or magistrate. Different burdens of proof apply, depending on the situation of the claimant (see below "Burden of proof"). Third parties can intervene and present facts and evidence to prove that they are the rightful owners of the property. The judge will decide if the claimant has the right to the land title and to return to the property. In the post-judicial phase, the judge will oversee and monitor the execution of the judgment.

### Statistics on victims of displacement

According to the Victims Unit, which works to promote the effective participation of victims in the reparation process,<sup>62</sup> of the 8,190,451 victims of the internal armed conflict who are registered under Law 1448, 6,518,419 of these are victims of displacement, whilst 702,679 are victims of displacement and other facts.<sup>63</sup> This means that around 90% of the registered victims are victims of forced displacement. It is therefore unsurprising that delegates of the Fifth Caravana were told repeatedly that land restitution would be the key deciding factor in the success of the peace process.

As regards the land restitution component of Law 1448 specifically, the Fundación Forjando Futuros reports that there have been 93,686 claims presented; 4,065 of these have been resolved in favour of the claimant, and 24,257 rejected. According to governmental estimates, each land judge has to deal with approximately 2,687 cases, a huge workload, resulting in backlogs.

### Barriers to effective functioning of Law 1448

The delegates of the Fifth Caravana heard testimony from a number of sources including lawyers and human rights defenders, and civil servants working in the Land Restitution Units themselves about some of the reasons for these poor outcomes and the less than effective functioning of the land restitution mechanism under Law 1448.

#### Macro- and micro-focalisation

These are processes by which the government designates an area as being apt for land restitution, with the prior authorisation of the Ministry of Defence. Only once an area has been authorised in this way will claims relating to that area be dealt with administratively, even though there is no barrier to victims making applications under Law 1448 in relation to areas that have not yet been authorised. Even if an area is authorised, the process of delimiting the area can face serious difficulties, since the properties have changed significantly in their configuration, and given the lack

59. Article 3, Law 1448 of 2011.

60. Ministry of Justice, Colombia (undated). "Reparaciones: Una oportunidad para transformar vidas". Published at: <http://www.justiciatransicional.gov.co/Justicia-Transicional/Reparaciones>

61. See Report of the IV International Delegation of Lawyers to Colombia, 2014, pp.29-33.

62. Unidad para las Víctimas (Government of Colombia) (undated). "Misión y Visión". Published at: <http://www.unidadvictimas.gov.co/es/misi%C3%B3n-y-visi%C3%B3n/184>

63. Red Nacional de Información (Government of Colombia) (undated). <http://rni.unidadvictimas.gov.co/>.



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of land registration systems in many municipalities (see below), in many cases there is no record of the changes that have been made.

### **Lack of land register / land register not being up to date**

Caravana delegates in Medellín heard that 70-80% of municipalities had no autorización catastral (system of land registration), and even in places where a land register exists, the fact that such registers are not up-to-date can cause serious problems. The Director of the Land Restitution Unit in Medellín commented that in the best case scenario, the last updates would have taken place 25 years ago.

### **Burden of proof**

The key progression to allow justice under Law 1448 is the reversal of the burden of proof from the claimant (the displaced person) onto the current occupier of the land. However, in the quest for justice the issue of a "second occupier" has arisen. Often land is occupied by individuals who claim to be victims of displacement themselves and to have occupied the land in good faith. The law has been amended to address and balance the needs of the original claimant with these second occupiers. A high standard of "qualified good faith" is applied, in order for a person to be recognised as a "second occupier". The current occupier would have to demonstrate that they have no links to armed activities, that they had no participation in the displacement of the original owner, that they bought the land at a fair price and did not force the original occupier to sell or take advantage of the situation. However, a lower standard of "simplified good faith" is applied to vulnerable groups: indigenous groups, campesinos, Afro-Colombians. If the standard is satisfied, they are able to stay on the land and the original owners receive compensation instead.

The Caravana was told that the extension of the law to recognise the "second occupier" has been perceived to be a weakness of the law and is being exploited by paramilitary groups and multinational corporations. The Land Restitution Unit reported that it is known that behind the scenes multinational corporations are funding paramilitaries and using campesinos as a

façade, so that the lower standard of good faith applies to land they wish to occupy. Multinational corporations are also seeking to change the law so that the lower standard of good faith is extended, so that it would apply to them and help them legitimately land grab and ensure that the State and not themselves would have to pay compensation to the displaced people. This is therefore an example of how attempts to enable justice and the provision of reparations can be exploited and ultimately used to prevent access to justice in some cases.

### **Lack of resources within the LRU**

As noted above in the "statistics" section, the land restitution mechanism is considerably overloaded with cases. In Barranquilla, the Caravana heard that the LRU is currently dealing with 6000 cases. When asked whether they have sufficient funds, they said they did, but they commented that there was a lack of personnel, namely lawyers, for dealing with the workload.

In addition to this, there are lengthy delays in dealing with cases. In the administrative phase, the maximum time for dealing with a case is 60 days, and up to 90 days in exceptional cases, but in reality, this is rarely complied with, as they are reliant on other entities to respond to their enquiries in the course of their investigation into the land.

### **Threats and hindrance of the work of the LRU**

In Barranquilla, the Caravana heard that the LRU also suffers from a great deal of prejudice and attacks to prevent them successfully returning land to displaced people. In 2014, one topographer, named Robinson Álvarez, was assassinated in carrying out his work. Interestingly the LRU noted that the tactics that have been used against them have changed and that there are more media attacks and "judicialisation" of the lawyers (legal proceedings on the basis of false accusations and so on). The Caravana heard that the director of the LRU had been required to defend herself before the Attorney General in relation to her involvement in certain land restitution cases. The Caravana also heard about the threats and harassment received by the director of the LRU in Magdalena. The LRU felt that

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the work that they undertake will only become harder following the peace agreement, creating an additional layer of complexity, with insurgent guerrilla groups and revitalised paramilitary groups occupying the land.

### **Lack of civil society involvement in the judicial process**

La Fundación Forjando Futuros in Medellín conducted an analysis of 150 judgments, and found that in only two of those cases was the representation of the victim conducted by a human rights organisation alongside the Land Restitution Unit; in all other cases, it was only the LRU representing the victim in the judicial phase of the process.

Moreover, human rights lawyers are reluctant to represent victims in land restitution cases for fear of being threatened. In particular the Caravana heard about threats and attacks from the paramilitary group Ejército Anti-Restitución de Tierras (the Anti-Land Restitution Army). There are also very few lawyers for very many clients. It is not unusual for a lawyer to have up to 800 cases, including land restitution cases.

### **Stigmatisation of victims**

Victims and lawyers complained that their situation was misreported in the press, with land restitution disputes between then original owners and the subsequent or second occupants described as disputes within the community or family (see Case study 12 below). Caravana delegates in Cartagena heard reports that in a demonstration on 5 August 2016 the national head of the Land Restitution Unit, Ricardo Sabogal, told the demonstrators that they should return home and sort out their own problems, characterising the disputes as being inter-campesino. Similarly, victims can be stigmatised even by the judicial system itself (see Case study 13 below, Guacamayas).

### **Lack of implementation of judgments**

Even when rulings are made in favour of victims, this is not the end of the story. The Caravana heard that key challenges at this stage of the process relate to the physical transfer and reoccupation of the land, and security risks, as well as situations where land is

damaged beyond repair. Sometimes, for example, it is not possible to return to the land because it is in use by a company. It may even be that the company no longer exists, and its claim to the land has been taken over by a bank –Delegates in Cartagena heard from victims that this was the case in Libertad, San Onofre, where the Banco Colombia now owns their land following the bankruptcy of the company that took it over.

Indeed, although Law 1448 foresees a range of measures, including social assistance, and assistance with livelihoods, in practice these often appear insufficient to ensure an effective return to the land. Some of these challenges are illustrated by the case of Santa Rita (see Case study 14 below).

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### CASE STUDY 12: Robinson A (Cartagena)

A former assessor of the Land Restitution Unit told Caravana delegates in Cartagena that he was a demobilised guerrilla. He and five other military groups signed an agreement in 1991 and were awarded land as part of the settlement by INCORA (the Colombian Institute for Agrarian Reform), and became landowners. Ten families were awarded 400 hectares and started farming the land. From 1992 onwards five people were killed and one person disappeared, and the rest left. It was a very public case when paramilitary leader Salvatore Mancuso Gomez gave orders to paramilitaries to clear the land of people.

Robinson qualified as a lawyer after the displacement and exile. He and the other families have claimed restitution, which is when he discovered that the system was failing the victims. He also reported that the land restitution process has not settled the cases of all the families involved. Although he is registered as a victim, his case has not concluded. The authorities have characterised the situation as division within the communities, but he viewed this as a deliberate strategy. He emphasised that there were only three judges for cases across the whole coast, and he would have to wait for years for a result. The local Land Restitution team has been cut and in June, 25 civil servants were reportedly sacked for corruption.

### CASE STUDY 13: Guacamayas (Antioquia)

Colombian human rights lawyers' collective the Corporación Jurídica Libertad is representing a group of campesinos from the Guacamayas community in Urabá in Antioquia, in a case which was commenced in 2012 by the Elite Sub-Unit for Property Prosecutions of the Prosecutor's Office (Subunidad Élite de Persecución de Bienes de la Fiscalía), alleging that the campesinos were forcibly displaced by paramilitary groups and then intimidated so that they would sell their land at low prices to the Sociedad Guacamayas Ltda.

In April 2014, the tribunal charged with controlling guarantees in Medellín decided, at first instance, not to award the restitution of 12 properties to the campesinos. The tribunal decided that the community had proved neither the forcible seizure of the land nor the threat of danger that would have forced them to sell at a low price. The tribunal ruled in favour of the company, characterising one of the claimants as "lying" and "deceitful", and concluding that the purchases which took place between 1996 and 1998 were in accordance with the law.

The Caravana is concerned about this stigmatisation against one of the community members. It is also worrying that, according to information we received, the threats against them may not have been taken seriously.



Delegates in Cartagena © Colombia Caravana Netherlands

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### CASE STUDY 14: Santa Rita (Magdalena)

Santa Rita was once a thriving town of 4000 people (400 families). Because of its geographical and strategic importance, it was targeted and ransacked by the paramilitary group Autodefensas Unidas de Colombia ("AUC") (the United Self-Defence Forces of Colombia) over a number of years through massacres, assassinations, femicide and disappearances. The extreme nature of the violence used against the townspeople meant that those who survived left the town for neighbouring towns and cities, fearing for their lives.

In 2008, some of the people voluntarily returned to the land. The Caravana was told that 192 of the original 400 families had voluntarily returned to the land and were in the midst of claims for restitution and reparation. Not all families had placed claims under Law 1448 as some did not want to return. Caravana delegates spoke to the lawyer at the LRU who was processing 250 applications of the original 400 families; she explained that the applications of the Santa Rita community has been collected together and that a positive judgment had been reached in relation 15 of 31 cases. There were another 36 cases which have been heard and the lawyer was confident judgment should be reached soon. There were a further 100 cases in the judicial phase however, the rest of the cases remain in the administrative phase with some applications still at the very early stages.

The LRU wants to ensure that everyone in Santa Rita is included in the process.

The positive judgment relating to the first 31 cases not only provided the victims with specific reparations and restitution, but it also placed the government under an obligation to reinvigorate the area with socio-economic projects and to ensure that a proper road is built to connect the community with the rest of the nearby settlements. However, the Colombian lawyers that the Caravana accompanied to Santa Rita made it clear that since the initial judgment, no changes has actually been implemented and that in fact in the last four years very little has changed. So despite promises for change no projects or investment have been made in the community, nor has the work on the road properly started.

There was a real sense of lost hope in the community as well as distrust; it was a very clear example of where the system had failed to provide any meaningful assistance, and the community was clearly frustrated especially with the failure to enforce the judgment and the lack of any concrete change. The community also voiced its frustration with the way that the law did not differentiate between the levels of victimhood that had been suffered.



Caravana Barranquilla group speak with Santa Rita community members © Colombia Caravana UK

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### Some specific recommendations in relation to Law 1448<sup>64</sup>

- Greater emphasis on collective restitution – Claims could be dealt with collectively under Law 1448, where the claims allow for this kind of restitution. It is estimated that around 50% of cases could be appropriately dealt with in this way.
- Administrative restitution – A purely administrative procedure could be adopted in cases where there exists no opponent to the restitution claimed, where the claimant is occupying barren land, or where the claim relates to property which has already been adjudicated upon by the National Institute for Rural Development (Instituto Nacional de Desarrollo Rural-INCODER) or by municipal authorities.
- The reversal of the burden of proof – could be applied in both the administrative and the judicial phase of the procedure, in accordance with Article 78 of Law 1448.
- Security and protection of victims – The national police, the Fiscalía, the National Protection Unit, the departments and the municipalities must guarantee the security of victims and human rights organisations by prohibiting the carrying of arms in the 12 macro-focalised areas for land restitution. Additionally, the names of land-grabbers and front-men (testaferros) should be disclosed, and criminal investigations into assassins and those who finance and support them should be ensured.
- Participation – The participation of victims' organisations and civil society in the documenting of cases, the setting up of a land registry in the administrative phase, and representation in the judicial phase, could be strengthened.
- Economic sustainability – It is for the national government and the regional and local authorities to ensure that the restitution of land is sustainable. For that, it is necessary to offer viable opportunities for economic development and investment in social projects.

### Mega-projects and displacement

Displacement suffered due to mega-projects (Megaproyectos) is key in considering guarantees of non-repetition and the underlying structural reasons which continue to fuel human rights abuses in Colombia. In many of the regions visited, the human and environmental impacts of extractive mining, construction and infrastructure building were raised by a number of witnesses and organisations. In Medellín, the Caravana heard evidence about the social impact and environmental concerns raised by large-scale energy projects. Areas particularly affected were Urabá, Antioquia Northeast and Bajo Cauca. The Caravana heard about the violence that often accompanies these projects - a phenomenon described as *vaciamiento del territorio* or a 'hollowing out of the territory' which leads to displacement of people. During the 80s and 90s some 250,000 people suffered displacement in these territories; measures intended to aid return<sup>65</sup> have not resulted in resettlement to previous population levels. Many of these projects – particularly the recent micro hydro-plants planned in the region (micro-centrales hidroeléctricas) do not create sustainable and viable electricity for the local population. A local organisation in Antioquia, Rios Vivos, highlighted the importance of a specific truth commission to investigate and monitor the social and environmental impacts of projects implemented in the territory. It is vitally important the national governments support and promote the important work undertaken by environmental defenders and organisations such as Rios Vivos.

64. Information received by the Caravana Medellín delegation

65. Law 1448/2011



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### Case study 15: Represa Hidroituanga (Antioquia)

The Pescadero-Ituango hydroelectric plant is one of the country's largest hydroelectric plants. Construction began in 2011 and it is due to be operational in 2018. Its construction has affected 12 municipalities and it is estimated by Rios Vivos that a further three to four municipalities could also be directly affected. Following concerns about the impact of the project in the North, West and Bajo Cauca department the Rios Vivos movement brought evidence of these concerns before the authorities in Antioquia. As a result, in March 2016, the Government of Antioquia signed Decree 1606 to address conflicts over the hydroelectric plant. It is hoped that a roundtable and proper analysis might enable some solutions to be found in relation to further impacts of the construction project.

The work of Rios Vivos and other similar organisations highlights that governments must ensure that the promotion of long-term peace and observance of human rights norms addresses issues which have often fuelled human rights abuses. Providing scrutiny, accountability and consultation regarding the environmental and social impacts of extractive mining and other large-scale infrastructure projects becomes a critical part of building a context in which human rights abuses including large scale human displacement do not happen.

### Protection of vulnerable communities – role of community leaders

Long-term peace and proper guarantees of non-repetition require structural transformation not only within institutions but also culturally. This has been recognised not only by the Colombian government during the peace negotiations but has been underlined by the international community and the IACHR in its reports on Colombia. Significant in any change of culture and protection of groups that have been particularly vulnerable and marginalised during the armed conflict are the importance of community leaders and representatives. Not only are community leaders able to represent the interests of the communities but they also help communities adjust to change.

During the regional visit to the coastal city of Tumaco in the province of Nariño the Caravana heard accounts that community leaders of the largest indigenous peoples of the region, the Awá, had been subject to detentions. It should be noted that the targeting of this marginalised and vulnerable indigenous community has been raised and documented in previous visits of the Caravana.

The Caravana was told that there are 21 indigenous Awá people detained at Tumaco Penitentiary, despite initial difficulty in obtaining the exact figure. The delegation was advised that there were separate cultural resources allocated to indigenous detainees however it was not clear what provisions were in place and indigenous detainees were unaware of such measures. Indigenous detainees suffer discrimination as accused guerrilla supporters and are isolated in different patios of the prison. Documents are not translated or explained to Awá detainees in their native language who often do not understand the basis on which they are detained or what evidence, if any, is relied upon by the prosecution. Prison conditions are extremely poor; due to overcrowding many detainees were forced to sleep on mattresses on the floor that had become damp in waterlogged cells. Health services were initially provided by the Colombian National Prison Authority (INPEC), however it has since been subcontracted to a private health service provider (an Entidad Promotora de Salud or EPS)<sup>66</sup> called Caprecom. The EPS is under-resourced, and staff experience great difficulty in obtaining the necessary medicine.

These accounts raise troubling questions about the role of the State and the criminal process in undermining the leadership of vulnerable communities, particularly Afro-Colombian and indigenous communities. It is important that the national government takes measures to investigate these allegations and to ensure that promotion and protection of vulnerable community becomes part of the efforts towards building genuine guarantees of non-repetition.

66. Following reforms to the health care system in Colombia, a large number of public health services that were previously provided directly by the State are now sub-contracted to EPSs, which are private health care service providers.

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### Rehabilitation – the symbol of the Colombian prison

A core feature of the commitment to the guarantees of non-repetition of grave human rights abuses is changes to society that must accompany the recognition of authentic truth, justice and reparations within the framework of long term peace. An issue which was repeatedly emphasised, both in discussions in the regions and amongst the Caravana delegation, was that transitional justice must encompass the rehabilitation of State institutions and practices. What is meant by this is that for the State to become the guarantor of long-term peace and the respect for fundamental human rights, it must itself undergo transformation and rehabilitation. To this extent, it seems to us that the issue of prison conditions was highly symbolic. The prison as a site for rehabilitation, as well as punishment, takes on an important role in hopes of building new lives and beginnings after periods of violence; however, prisons are all too often neglected and abandoned places by the State. The Cali regional delegation obtained access to Jamundi prison and was able to witness the nature of prison conditions inside. What emerges from the visit are the deep-seated problems and concerns about prison conditions and the concerns about the urgent need for prison reform.



Caravana delegates speak to authorities in Palogordo prison, Bucaramanga © Melissa Tessler

#### CASE STUDY 16: Jamundí Prison (Valle del Cauca)

The visit took place on Tuesday 23 August 2016 in the Nelson Mandela wing.<sup>64</sup> The main concerns relating to Jamundi prison were inadequate health care provision, the restricted access to water, overcrowding and a lack of access to justice. In relation to health care there was little access to doctors, dentist and psychologists; the Caravana was informed that one doctor had to attend to 4000 prisoners. In addition, it was stated that there was there was insufficient healthcare to meet the needs of women prisoners.

A further account described the situation in Block 2B, where there are 600 prisoners. One doctor attends this Block every other day for two hours, which makes it impossible for the doctor to see all the prisoners requesting medical attention. The previous healthcare provider at the prison was a private company named Caprecom, which went into liquidation in early 2016. The current healthcare provider was a company called Uspec and the Caravana was told the healthcare provision is now even worse than it was before.

The Caravana was informed that there are six persons residing in each cell (one account stated there could be eight) which are only designed for four people, which means that some prisoners have to sleep on the floor. There were allegations of abuse by prison staff, which was said to be physical and psychological. Where prisoners attempt to stand up for human rights, the evidence suggest they suffer adverse consequences, for example, they frequently moved to other prisons, which means that they experience difficulties in meeting with their legal advisers and in receiving visits by their family.

The Caravana was surprised to hear that three prisoners had been convicted without the right to attend their own trial; and we were informed that while Colombian law permitted this in some circumstances, but that a tutela (a writ seeking protection of constitutional rights) to challenge its legality was pending.

67. The visit party consisted of: 4 Caravanistas, 4 Cali Lawyers and two persons from the office of the Defensor del Pueblos. The party met with 20 prisoners in total (18 FARC-EP and 2 ELN).

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### Some thoughts on non-repetition and rehabilitation (*including promotion of human rights*)

The terms of the Peace Agreement propose various mechanisms for a comprehensive system for truth, justice, reparation and non-repetition.

These commitments involve both the FARC-EP and the national government providing undertakings about the necessary institutional and cultural change involved in the post-conflict protection of human rights. For the national government this involves recognition of the duty of the State to promote, protect, respect and guarantee human rights and ensure the right to peace, particularly in territories most impacted by the decades-long armed conflict. On the part of the FARC-EP there are reciprocal duties to promote and protect individual freedoms and to recognise the right of peaceful coexistence of communities as the organisation transitions into political life.

Under the final aspect to the peace agreement there were renewed efforts and commitments to tackle the underlying and structural impediments to real long term peace – including rural reform, illicit drug trafficking, reversing the effects of the conflict and the conditions which had sustained it.

Some of the specific measures to follow the implementation of the peace process include greater national monitoring and information about human rights (sistema nacional de derechos humanos); a national education plan for the promotion of human rights; strengthening human rights organisations; encouraging the follow-up regarding investigations into crimes/threats against human rights defenders and a set of institutions to build prevention and protection measures in post-conflict Colombia.<sup>68</sup>

Deep seated structural inequalities and ingrained practices of marginalisation which will inevitably pose significant challenges for the promotion, respect and guarantees regarding the place of human rights in Colombian society after the conflict. Reflecting on the evidence presented to the Caravana it is apparent that long-term guarantees require “rehabilitation” of the role of the State. To this extent the Caravana has added the theme of rehabilitation

to the considerations of reparations and non-repetition and focuses on exploring this by considering prison conditions which exemplify the rehabilitation that Colombia requires as part of moving beyond the conflict.

The Caravana delegates heard compelling reports from all regions about the persistence of paramilitary groups, which were described as still being widely active and continue to exercise control, including violence against community leaders and vulnerable groups. The Caravana delegation was told that the term “criminal gangs” (BACRIM) is a deception that facilitates the denial of the political and economic interests that these paramilitary groups represent. Defenders and lawyers in all regions also told the Caravana that guarantees of non-repetition can only be achieved if the State recognises the truth of these groups’ continued existence, dismantles all of these groups and the structures which allow them to persist.

Also of grave concern to human rights lawyers and other defenders is the persistence of the internal security doctrine which includes the idea of the “internal enemy”. Medellín delegates were told that although the city is held up as a national success story, the truth is much more complicated. The armed conflict between the guerrillas and government is just one expression of a much broader and complex social, political and economic conflicts related throughout the country, where anyone who defends human rights continues to be seen as part of the “internal enemy”. In the Department of Antioquia, this includes those who search for missing persons, prosecute cases involving State crimes, carry out union activities, confront mining and hydroelectric projects or denounce the serious inequalities that they face in an urban environment like Medellín where a significant part of the population lacks effective access to public services and so are literally disconnected resulting in intra-urban displacement.<sup>69</sup> During the first half of 2016, 143 cases have been documented of threats and attacks against defenders in the department of Antioquia alone: Urabá (60 cases); Valle de Aburrá (16 cases); Bajo Cauca (16 cases); Nordeste (25 cases); Norte (23 cases); Oeste (1 case); Este (2 cases).<sup>70</sup>

For this idea of the “internal enemy” to be eliminated from Colombia, it needs to be eradicated from the military and security doctrine which should form part of the national debate on the future configuration (and rehabilitation) of the State security forces.

68. This includes a National Human Rights Plan (Plan Nacional en derechos humanos) and the creation of an Advisory Commission (Comisión Asesora).

69. A platform called the “inter-district table of the disconnected” warns precisely of the risk of displacement that the development of áreas as “innovation districts” in Medellín may cause.

70. Coordinación Colombia Europa Estados Unidos (2016). Informe Semestral sobre la Situación de Derechos Humanos en Antioquia: Entre el sueño de la paz y la continuidad de la guerra. Published at <http://coeuropa.org.co/wp-content/uploads/2016/08/Informe-Semestral-Sobre-la-Situaci%C3%B3n-de-Derechos-Humanos-en-Antioquia.-2016-1..pdf>

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## Colombian human rights organisations & NGOs

Asociación Colombiana de Abogados Defensores de Derechos Humanos (ACADEHUM), Colectivo de Abogados José Alvear Restrepo, Equipo Jurídico Pueblos (EJP), Comité Permanente para la Defensa de los Derechos Humanos, Programa Somos Defensores, Coordinación Colombia Europa Estados Unidos, Asociación de Víctimas de Transnacionales, Comunidad de Juristas Akubadoura, Comisión Colombiana de Juristas, Asociación Tierra Digna, Comisión Intereclesial de Justicia y Paz, Fundación de Derechos Humanos del Oriente Colombiano, Corporación Colectivo de Abogados Luis Carlos Pérez (CCALCP), Poder Paz, SINTRAUNICOL, ASCAMAT, Sindicato CTC, ASOFAMIDECU, Corporación Mesa de Fortalecimiento de Organizaciones de Población Desplazado de Norte de Santander y Asociación de Familias Zulianas (ASOFAZUL), Fenalpaz, Asesor jurídico de CUT, Universidad de Pamplona, Universidad UDES, Escuela de Administración Pública (ESAP), Universidad Libre, Causa Común, Universidad Francisco de Paula Santander, Corporación Jurídica Libertad (CJL), Diócesis de Quibdó, Movimiento Ríos Vivos, Cinturón Ambiental Occidental, Corporación Convivamos, Movimiento Social por la Vida y la Defensa del Territorio (Movete), Grupo Interdisciplinario de Investigación para la Transformación Social-Kavilando, Mesa Interbarrial de Desconectados, Asociación Campesina del Bajo Cauca Antioqueño (ASOCBAC), Asociación Campesina de San José de Apartadó (ACASA), Mesa Ambiental del Carmen de Atrato, Corporación Acción Humanitaria por la Convivencia y la Paz del Nordeste Antioqueño-CAHUCOPANA, Fundación Forjando Futuros, Instituto Popular de Capacitación, Asociación Campesina de Antioquia (ACA), Asociación Campesina de Ituango (ASCIT), Asociación Tierra y Paz, Fundación Comité de Solidaridad con los Presos Políticos (FCSP),

Corporación Nelson Mandela por la paz y la Libertad, Movimiento Política Marcha Patriótica, Asociación de Hermandades Agroecológicas y Mineras de Guamocó (AHERAMIGUA), Corpades, Congreso de los Pueblos Antioquia, Mesa de Garantías, Mujeres Caminando Por la Verdad, Movimiento Víctimas de Crímenes de Estado (MOVICE), Asovi, Comité Permanente de Derechos Humanos Cali, Red Derechos Humanos Cali/ Cauca, Vida Digna, Sindicato nacional de trabajadores del campo Colombiano, Fundación Nubia Pany, Corporación Suyana, Corporación Justicia y Dignidad, SINALTRAINAL (trade union), Movimiento Campesinos sin Tierra, Universidad Industrial de Santander UIS, ASORVIN, MTCC, Fundación Guasimín, Mesa de Víctimas (Tumaco), Casa de la Memoria Tumaco, Representatives of Women Victims and Awá Indigenous People (Tumaco), Comité Permanente de Defensores de Derechos Humanos del Atlántico (CPDH), Fundación Foro Costa Atlántica, Red de Amigos por la Paz, Colombia Humanitaria, Fundación Comité de Solidaridad con los Presos Políticos, Red Nacional de Mujeres, Fundación para la Paz, Derechos Humanos y Democracia, Fundación Centinelas Cívicos del Atlántico Comunidad de Santa Rita (Magdalena)

## Colombian authorities

Colombian Embassy in the UK, Colombian Ministry of Foreign Affairs, Colombian Presidential Council for Human Rights, National Prosecutor's Office, Human Rights Ombudsman's Office, National Protection Unit of the Interior Ministry, Land Restitution Unit, Colombian National Prison Authority (INPEC), Rights Office in the Departmental Police - Santander, Human Rights Prosecutors in Bucaramanga and Medellín, Local Human Rights officers (Personería) – Tumaco, Human Rights Procurator (Tumaco), Medellín Mayor's Office, Honorable Tribunal Superior de Cali - Sala Penal, Sala Penal del Tribunal Superior de Distrito Judicial de Santander, National Association of Employees of the Judicial Branch (ASONAL), Procurator (Cúcuta).



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## **International authorities and organisations**

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Colombia Caravana UK Lawyers' Group  
8 Union Street, London SE1 1SZ  
Email: colombian.caravana@gmail.com  
Website: www.colombiancaravana.org.uk

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## International organisations supporting the Caravana:



**The International Caravana of Jurists is the embodiment of the international legal community's concern and solidarity with human rights lawyers and other human rights defenders in Colombia. We will continue to stand alongside our Colombian colleagues, many of whom continue to be at risk, for as long as they ask us to.**



Yessika Hoyos, human rights lawyer from the José Alvear Restrepo Lawyers' Collective, with Wout Albers from the Colombia Caravana Netherlands Group © Colombia Caravana Netherlands



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The International Caravana of Jurists is a pioneering initiative based on solidarity, education and advocacy offering support to lawyers, especially human rights lawyers, and other legal professionals in Colombia. Members of the Caravana work voluntarily and are committed to working towards the day when Colombian human rights lawyers and defenders are able to carry out their work freely without threat to their lives and occupation. Since 2008, international lawyers' delegations have visited Colombia every two years to gain first-hand knowledge of the situation faced by human rights lawyers. The information gathered is drawn together into a report and used to shine a spotlight on the issues human rights lawyers and their clients are confronting, through awareness-raising, urgent action and advocacy activities.